



South Dakota One Call Notification Board

Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529
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July 14, 2003

Ginny Beck
Crooks Municipal Utilities
P. O. Box 785
Crooks, SD 57020

Wade Peterson
Peterson Farms
25563 475th Avenue
Renner, SD 57020

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on July 10, 2003, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC03-003 filed by Crooks Municipal Utilities against Wade Peterson (Peterson Farms).

By a unanimous vote of the Enforcement Committee, the recommended resolution to the alleged violations included in this complaint were determined to be as follows:

Alleged Violation of SDCL 49-7A-5

1. The Enforcement Committee found that there was probable cause that a violation of SDCL 49-7A-5 had occurred as claimed in this complaint.
2. The Enforcement Committee recommended that under SDCL 49-7A-18 the following penalty be assessed as resolution of this complaint:
Wade Peterson be assessed a penalty of five hundred dollars (\$500.00) with three hundred dollars (\$300.00) suspended on the basis that Wade Peterson comply with SDCL-49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-003.

Alleged Violation of SDCL 49-7A-12

1. The Enforcement Committee found that there was probable cause that a violation of SDCL 49-7A-12 had occurred as claimed in this complaint.
2. The Enforcement Committee recommended that under SDCL 49-7A-18 the following penalty be assessed as resolution of this complaint:
Wade Peterson be assessed a penalty of one-thousand dollars (\$1000.00) with seven hundred dollars (\$700.00) suspended on the basis that Wade Peterson comply with SDCL-49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-003.

The findings and recommendation of the Enforcement Committee are summarized on the attached form.

Under SDCL 49-7A-27 either party may reject the recommendation of the Enforcement Committee by requesting a formal hearing on either or both violations alleged in this complaint. Your decision should be reflected in the shaded section of the attachment. Failure to respond to this notice will be considered as concurrence with and acceptance of recommendations of the Enforcement Committee in the matter of resolution to complaint OC03-003. Please return the signed form by August 15, 2003 to:

South Dakota One Call Notification Board
1012 N. Sycamore Avenue
Sioux Falls, SD 57110-5747

If both parties accept this resolution, the South Dakota One Call Notification Board is required to accept the resolution and close this complaint. If either party rejects the Enforcement Committee resolution of either or both of the alleged violations, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve either of both of the allegations alleged in OC03-003.. Following this hearing, the Board shall either render a decision dismissing the complaint for insufficient evidence or shall impose a penalty pursuant to SDCL 49-7A-18.

Pursuant to SDCL 15-6-55, failure to answer this Complaint could result in a default judgment being issued against you. Appropriate liens and other legal collection actions could result. You are strongly urged to reply to this Notice in the time frame described above and to obtain the advise of counsel should you have any legal questions.

Sincerely,

Larry L. Englerth
Executive Director

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ginny Beck
Crooks Municipal Utilities
P. O. Box 785
Crooks, SD 57020

2. Article Number

(Transfer from service label)

7002 2410 0006 0451 6758

PS Form 3811, August 2001

Domestic Return Receipt

2ACPRI-03-Z-0985

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X *Ginny Beck*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

GINNY BECK

C. Date of Delivery

7-16-03

D. Is delivery address different from item 1?

☐ Yes

if YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Wade Peterson
Peterson Farms
25563 475th Avenue
Renner, SD 57020

2. Article Number

(Transfer from se

7002 2410 0006 0451 6680

PS Form 3811, August 2001

Domestic Return Receipt

2ACPRI-03-Z-0985

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X *Wade Peterson*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

7-16-03

C. Date of Delivery

7-16-03

D. Is delivery address different from item 1?

☐ Yes

if YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

ENFORCEMENT COMMITTEE ACTION

FOR ENFORCEMENT COMMITTEE USE ONLY

REMARKS:

Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation

In making its determination of a statutory violation relative to Complaint OC03-003, the Enforcement Committee of the South Dakota One Call Notification Board found that Wade Peterson acknowledged in Item 1 of his response that he had violated the South Dakota Statute by conducting excavation activity without contacting the South Dakota One Call System. The lack of notification to facility operators of the proposed excavation activity does not allow for the proper marking of these facilities prior to the start of the proposed excavation. This failure to provide notification to underground facility operators places their facilities, the excavator, and the public in an unsafe situation.

Alleged Violation of SDCL 49-7A-12 Notification of damage to underground facility

In making its determination of a statutory violation relative to Complaint OC03-003, the Enforcement Committee of the South Dakota One Call Notification Board found that Wade Peterson acknowledge in Item 2 of his response that he had damaged the underground facility when he was closing the trench. The Board did inspect the damage pipe but made no determination as to the cause of the damage.

SDCL 49-7A-12 requires that the operator or the One Call Center be notified immediately if an underground facility is damaged, dislocated or disturbed in advance or during excavation work. The Enforcement Committee found there was probable cause to determine that Wade Peterson had failed to make this notification when the pipe was damaged.

RECOMMENDATION

FOR ENFORCEMENT COMMITTEE USE ONLY

VIOLATION OF SOUTH DAKOTA STATUTE (S) OR RULES (S):

A violation of SDCL 49-7A-5 was found to have occurred

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:

The committee recommends a penalty of five-hundred dollars (\$500.00) with three-hundred dollars (\$300.00) suspended on the basis that Wade Peterson will comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-003.

COMMENTS:

The committee finds this a very serious violation and is concerned when a party acknowledges knowing a gas line is present in the excavation area and fails to notify the South Dakota One Call System.

VIOLATION OF SOUTH DAKOTA STATUTE (S) OR RULES (S):

A violation of SDCL 49-7A-12 was found to have occurred

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:

The committee recommends a penalty of one-thousand dollars (\$1000.00) with seven-hundred dollars (\$700.00) suspended on the basis that Wade Peterson will comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-003.

COMMENTS:

The committee finds this a significant violation of excavation practices that endangers the safety of the workers and the safety of the occupants in and near the site of the damage.

ACCEPTANCE OR REJECTION BY PARTIES INVOLVED IN COMPLAINT OC03-003

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO EACH OF THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC03-003.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO EACH OF THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC03-003, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC03-003.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO EITHER OR BOTH OF THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC03-003, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO VIOLATION(S) ALLEGED IN COMPLAINT NUMBER OC03-003. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

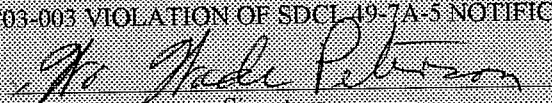
IF YOU DESIRE TO REJECT THE RESOLUTION OF EITHER OF THE ALLEGED VIOLATIONS, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON AUGUST 15, 2003.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

FAILURE TO ANSWER THIS RESOLUTION TO COMPLAINT OC03-003 WILL BE CONSIDERED AS ACCEPTANCE OF THE COMMITTEE RESOLUTION OF THE COMPLAINT PURSUANT TO SDCL 15-6-55. FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-003 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

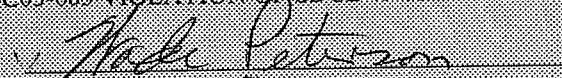

Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-003 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC03-003.

Signature

VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-003 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY.


Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-003 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC03-003.

Signature

ACCEPTANCE OR REJECTION BY PARTIES INVOLVED IN COMPLAINT OC03-003

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IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO EACH OF THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC03-003, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC03-003.

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VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-003 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Jerry Beck 7-16-03
Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-003 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC03-003.

Signature

VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-003 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY.

Jerry Beck 7-16-03
Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-003 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC03-003.

Signature